

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BENISTAR PROPERTY EXCHANGE TRUST
COMPANY, INC.

Plaintiff,

v.

JOSEPH IANTOSCA, Individually and as Trustee
of the Faxon Heights Apartments Realty Trust and
Fern Realty Trust, BELRIDGE CORPORATION,
GAIL A. CAHALY, JEFFREY M. JOHNSTON,

BELLEMORE ASSOCIATES, LLC,
MASSACHUSETTS LUMBER COMPANY, INC.,
ZELLE McDONOUGH & COHEN, LLP,
ANTHONY R. ZELLE, P.C., and NYSTROM
BECKMAN & PARIS, LLP

Defendants.

Civil Action No. 08-12069

MOTION TO DISMISS OF DEFENDANTS, JOSEPH IANTOSCA, BELRIDGE
CORPORATION, GAIL CAHALY, JEFFREY M. JOHNSTON, BELLEMORE ASSOCIATES,
LLC, AND MASSACHUSETTS LUMBER COMPANY, INC.

The defendants, Joseph Iantosca, Belridge Corporation, Gail Cahaly, Jeffrey M. Johnston, Bellemore Associates, LLC, and Massachusetts Lumber Company, Inc. (collectively referred to herein as "Cahaly"), move, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the claims of Benistar Property Exchange Trust Company, Inc. ("BPE"), for negligence, breach of fiduciary duty, breach of contract and unfair trade practices (Counts I, II, III, VII and VIII). As grounds therefore, Cahaly states that BPE was Cahaly's former litigation adversary in an underlying action in which Cahaly recovered a judgment in excess of \$20 million. BPE now alleges that Cahaly violated common law, contractual and statutory duties by prosecuting a court-assigned arbitration claim against UBS Paine Webber during the post-judgment collection phase of the underlying action for less than what BPE alleges was its full value. BPE's claims fail to state a

cause of action because: (1) the court's assignment of the arbitration claim imposed no duty on Cahaly to protect BPE's interest in the arbitration; (2) BPE's claims are barred by the applicable statute of limitations; and (3) BPE's Connecticut consumer protection claim fails as a matter of law. In further support of this motion, Cahaly incorporates herein by reference the memorandum of law filed with this motion and exhibits A through D attached thereto.

Respectfully submitted,

JOSEPH IANTOSCA, Individually and as Trustee of
the Faxon Heights Apartments Realty Trust and
Fern Realty Trust, BELRIDGE CORPORATION,
GAIL A. CAHALY, JEFFREY M. JOHNSTON,
BELLEMORE ASSOCIATES, LLC,
MASSACHUSETTS LUMBER COMPANY, INC.,

By their attorneys,

/s/ Steven D. Weil

Steven D. Weil, BBO # 548522
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 29th day of July, 2009.

/s/ Steven D. Weil

Steven D. Weil